

House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 46

SENATE BILL 1193

AN ACT

AMENDING SECTIONS 10-3140, 10-3141, 10-3704, 10-3821 AND 10-3823, ARIZONA
REVISED STATUTES; RELATING TO NONPROFIT CORPORATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 10-3140, Arizona Revised Statutes, is amended to
3 read:

4 10-3140. Definitions

5 In chapters 24 through 40 of this title, unless the context otherwise
6 requires:

7 1. "Acknowledged" or "acknowledgment" means either an acknowledgment
8 pursuant to title 33, chapter 4, article 5 or the signature, without more,
9 of the person or persons signing the instrument, in which case the signature
10 or signatures constitute the affirmation or acknowledgment of the signatory,
11 under penalties of perjury, that the instrument is the act and deed of the
12 signatory and that the facts stated in the instrument are true.

13 2. "Act of the board of directors" means either:

14 (a) An act of the majority of the directors present at a duly called
15 meeting at which a quorum is present, unless the act of a greater number is
16 required by chapters 24 through 40 of this title, the articles of
17 incorporation or the bylaws.

18 (b) Action taken by written consent of the directors in accordance
19 with chapters 24 through 40 of this title.

20 3. "Act of the members" means either:

21 (a) An act adopted or rejected by a majority of the votes represented
22 and voting at a duly held meeting at which a quorum is present where
23 affirmative votes also constitute a majority of the required quorum unless
24 a greater number of votes is required by chapters 24 through 40 of this
25 title, the articles of incorporation or the bylaws.

26 (b) An action taken by written consent of the members in accordance
27 with chapters 24 through 40 of this title.

28 (c) An action taken by written ballot of the members in accordance
29 with this chapter.

30 4. "Address" means a mailing address.

31 5. "Affiliate" means a person that directly or indirectly through one
32 or more intermediaries controls, is controlled by or is under common control
33 with the person specified.

34 6. "Articles of incorporation" means the original or restated articles
35 of incorporation or articles of merger and all amendments to the articles of
36 incorporation or merger and includes amended and restated articles of
37 incorporation and articles of amendment and merger.

38 7. "Board", "board of directors" or "board of trustees" means the
39 group of persons vested with the direction of the affairs of the corporation
40 irrespective of the name by which the group is designated, except that no
41 person or group of persons shall be deemed to be the board of directors
42 solely because of powers delegated to that person or group pursuant to
43 section 10-3801, subsection C.

44 8. "Business day" means a day that is not a Saturday, a Sunday or any
45 other legal holiday in this state.

1 9. "Bylaws" means the code of rules adopted for the regulation or
2 management of the affairs of the corporation irrespective of the name by
3 which those rules are designated.

4 10. "Certificate of disclosure" means the certificate of disclosure
5 described in section 10-3202.

6 11. "Class" refers to a group of memberships that have the same rights
7 with respect to voting, dissolution, redemption and transfer. Rights are the
8 same if they are determined by a formula applied uniformly.

9 12. "Commission" means the Arizona corporation commission.

10 13. "Conspicuous" means so written that a reasonable person against
11 whom the writing is to operate should have noticed it. For example, printing
12 in italics, boldface or contrasting color or typing in capitals or underlined
13 is conspicuous.

14 14. "Corporation" or "domestic corporation" means a nonprofit
15 corporation that is not a foreign corporation and that is incorporated under
16 or subject to chapters 24 through 40 of this title.

17 15. "Corporation sole" means a corporation formed pursuant and subject
18 to chapter 42, article 1 of this title.

19 16. "Court" means the superior court of this state.

20 17. "Delegates" means those persons elected or appointed to vote in a
21 representative assembly for the election of a director or directors or on
22 other matters.

23 18. "Deliver" includes mail, private courier, ~~or telefacsimile~~ FAX OR
24 ELECTRONIC MAIL transmission.

25 19. "Delivery" means actual receipt by the person or entity to which
26 directed.

27 20. "Directors" or "trustees" means individuals, designated in the
28 articles of incorporation or bylaws or elected by the incorporators, and
29 their successors and individuals elected or appointed by any other name or
30 title to act as members of the board.

31 21. "Dissolved" means the status of a corporation on either:

32 (a) Effectiveness of articles of dissolution pursuant to section
33 10-11403, subsection B or section 10-11421, subsection B.

34 (b) A decree pursuant to section 10-11433, subsection B becoming
35 final.

36 22. "Distribution" means a direct or indirect transfer of money or
37 other property or incurrence of indebtedness by a corporation to or for the
38 benefit of its members in respect of any of its membership interests. A
39 distribution may be in the form of any of the following:

40 (a) A declaration of payment of a dividend.

41 (b) Any purchase, redemption or other acquisition of membership
42 interests.

43 (c) A distribution of indebtedness.

44 (d) Otherwise.

45 23. "Effective date of notice" is prescribed in section 10-3141.

1 24. "ELECTRONIC MAIL" MEANS AN ELECTRONIC RECORD AS DEFINED IN SECTION
2 44-7002 AND THAT IS SENT PURSUANT TO SECTION 44-7015, SUBSECTION A.

3 ~~24.~~ 25. "Employee" means an officer, director or other person who is
4 employed by the corporation.

5 ~~25.~~ 26. "Entity" includes a corporation, foreign corporation, not for
6 profit corporation, business corporation, foreign business corporation,
7 profit and not for profit unincorporated association, close corporation,
8 corporation sole, limited liability company or registered limited liability
9 partnership, a professional corporation, association or limited liability
10 company or registered limited liability partnership, a business trust,
11 estate, partnership, trust or joint venture, two or more persons having a
12 joint or common economic interest, any person other than an individual and
13 a state, the United States and a foreign government.

14 ~~26.~~ 27. "Executed by the corporation" means executed by manual or
15 facsimile signature on behalf of the corporation by a duly authorized officer
16 or, if the corporation is in the hands of a receiver or trustee, by the
17 receiver or trustee.

18 ~~27.~~ 28. "Filing" means the commission completing the following
19 procedure with respect to any document delivered for that purpose:

20 (a) Determining that the filing fee requirements of this title have
21 been satisfied.

22 (b) Determining that the document appears in all respects to conform
23 to the requirements of chapters 24 through 40 of this title.

24 (c) On making the determinations, endorsement of the word "filed" with
25 the applicable date on or attached to the document and the return of copies
26 to the person who delivered the document or the person's representative.

27 ~~28.~~ 29. "Foreign corporation" means a corporation that is organized
28 under a law other than the law of this state and that would be a nonprofit
29 corporation if formed under the laws of this state.

30 ~~29.~~ 30. "Governmental subdivision" includes an authority, county,
31 district, municipality and political subdivision.

32 ~~30.~~ 31. "Includes" and "including" denotes a partial definition.

33 ~~31.~~ 32. "Individual" includes the estate of an incompetent individual.

34 ~~32.~~ 33. "Insolvent" means inability of a corporation to pay its debts
35 as they become due in the usual course of its business.

36 ~~33.~~ 34. "Known place of business" means the known place of business
37 required to be maintained pursuant to section 10-3501.

38 ~~34.~~ 35. "Mail", "to mail" or "have mailed" means to deposit or have
39 deposited a communication in the United States mail with first class postage
40 prepaid.

41 ~~35.~~ 36. "Means" denotes an exhaustive definition.

42 ~~36.~~ 37. "Member" means, without regard to what a person is called in
43 the articles of incorporation or bylaws, any person or persons who, pursuant
44 to a provision of a corporation's articles of incorporation or bylaws, have

1 the right to vote for the election of a director or directors. A person is
2 not a member by virtue of any of the following:

- 3 (a) Any rights that person has as a delegate.
- 4 (b) Any rights that person has to designate a director or directors.
- 5 (c) Any rights that person has as a director.
- 6 (d) Being referred to as a member in the articles of incorporation,
7 bylaws or any other document, if the person does not have the right to vote
8 for the election of a director or directors.

9 ~~37.~~ 38. "Membership" refers to the rights and obligations a member or
10 members have pursuant to a corporation's articles of incorporation, bylaws
11 and chapters 24 through 40 of this title.

12 ~~38.~~ 39. "Newspaper" has the same meaning prescribed in section 39-201.

13 ~~39.~~ 40. "Notice" and "notify" are prescribed in section 10-3141.

14 ~~40.~~ 41. "Person" includes individual and entity.

15 ~~41.~~ 42. "President" means that officer designated as the president in
16 the articles of incorporation or bylaws or, if not so designated, that
17 officer authorized in the articles of incorporation, bylaws or otherwise to
18 perform the functions of the chief executive officer, irrespective of the
19 name by which designated.

20 ~~42.~~ 43. "Principal office" means the office, in or out of this state,
21 so designated in the annual report where the principal executive offices of
22 a domestic or foreign corporation are located or in any other document
23 executed by the corporation by an officer and delivered to the commission for
24 filing. If an office has not been so designated, principal office means the
25 known place of business of the corporation.

26 ~~43.~~ 44. "Proceeding" includes a civil suit and a criminal,
27 administrative and investigatory action.

28 ~~44.~~ 45. "Publish" means to publish in a newspaper of general
29 circulation in the county of the known place of business for three
30 consecutive publications.

31 ~~45.~~ 46. "Record date" means the date, if any, established under
32 chapter 29 or 30 of this title on which a corporation determines the identity
33 of its members and their membership interests for purposes of chapters 24
34 through 40 of this title. The determinations shall be made as of the close
35 of business on the record date unless another time for doing so is specified
36 when the record date is fixed.

37 ~~46.~~ 47. "Secretary" means that officer designated as the secretary in
38 the articles of incorporation or bylaws or that officer authorized in the
39 articles of incorporation, the bylaws or otherwise to perform the functions
40 of secretary, irrespective of the name by which designated.

41 ~~47.~~ 48. "State" if referring to a part of the United States, includes
42 a state and commonwealth and their agencies and governmental subdivisions and
43 a territory and insular possession of the United States and their agencies
44 and governmental subdivisions.

1 ~~48.~~ 49. "Treasurer" means that officer designated as the treasurer in
2 the articles of incorporation or bylaws or that officer authorized in the
3 articles of incorporation, bylaws or otherwise to perform the functions of
4 treasurer, irrespective of the name by which designated.

5 ~~49.~~ 50. "United States" includes a district, authority, bureau,
6 commission and department and any other agency of the United States.

7 ~~50.~~ 51. "Vice-president" means an officer designated as a
8 vice-president in the articles of incorporation or bylaws or an officer
9 authorized in the articles of incorporation, the bylaws or otherwise to
10 perform the functions of a vice-president, irrespective of the name by which
11 designated.

12 ~~51.~~ 52. "Vote" includes authorization by written ballot and written
13 consent.

14 ~~52.~~ 53. "Voting power" means the total number of votes entitled to be
15 cast for the election of directors at the time the determination of voting
16 power is made, excluding a vote that is contingent on the happening of a
17 condition or event that has not occurred at the time. If a class is entitled
18 to vote as a class for directors, the determination of voting power of the
19 class shall be based on the percentage of the number of directors the class
20 is entitled to elect out of the total number of authorized directors.

21 Sec. 2. Section 10-3141, Arizona Revised Statutes, is amended to read:

22 10-3141. Notice

23 A. Notice under chapters 24 through 40 of this title must be in
24 writing unless oral notice is reasonable under the circumstances. Oral
25 notice is not permitted if written notice is required under chapters 24
26 through 40 of this title.

27 B. Notice may be communicated in person, by telephone, telegraph,
28 teletype, facsimile FAX, ELECTRONIC MAIL or other form of wire or wireless
29 communication, or by mail or private carrier. If these forms of personal
30 notice are impracticable, notice may be communicated by a newspaper of
31 general circulation in the area where published or by radio, television, or
32 other form of public broadcast communication.

33 C. Written notice by a domestic or foreign corporation to its members
34 OR DIRECTORS, if in comprehensible form, is effective when mailed, if
35 correctly addressed to the member's address shown in ON the corporation's
36 current list of members OR DIRECTORS. NOTICE GIVEN BY ELECTRONIC MAIL, IF
37 IN COMPREHENSIBLE FORM, IS EFFECTIVE WHEN DIRECTED TO AN ELECTRONIC MAIL
38 ADDRESS SHOWN ON THE CORPORATION'S CURRENT LIST OF MEMBERS OR DIRECTORS.

39 D. A written notice or report by a domestic or foreign corporation to
40 its members delivered as part of a newsletter, magazine or other publication
41 regularly sent to members shall constitute a written notice or report if
42 addressed or delivered to the member's address shown in the corporation's
43 current list of members, or in the case of members who are residents of the
44 same household and who have the same address in the corporation's current

1 list of members, if addressed or delivered to one of such members, at the
2 address appearing on the current list of members.

3 E. Written notice to a domestic or foreign corporation that is
4 authorized to transact business in this state, other than in its capacity as
5 a member, may be addressed to its statutory agent at its known place of
6 business or to the corporation or its secretary at its principal office shown
7 in its most recent annual report on file with the commission, or in the case
8 of a foreign corporation that has not yet delivered an annual report in its
9 application for a certificate of authority.

10 F. Except as provided in subsection C, written notice, if in a
11 comprehensible form, is effective at the earliest of the following:

12 1. When received.

13 2. Five days after its deposit in the United States mail as evidenced
14 by the postmark, if mailed postpaid and correctly addressed.

15 3. On the date shown on the return receipt, if sent by registered or
16 certified mail, return receipt requested, and if the receipt is signed by or
17 on behalf of the addressee.

18 G. Oral notice is effective when communicated if communicated in a
19 comprehensible manner.

20 H. If chapters 24 through 40 of this title prescribe notice
21 requirements for particular circumstances, those requirements govern. If
22 articles of incorporation or bylaws prescribe notice requirements, ~~THAT ARE~~
23 not inconsistent with this section or other provisions of chapters 24 through
24 40 of this title, ~~those requirements govern.~~

25 Sec. 3. Section 10-3704, Arizona Revised Statutes, is amended to read:

26 10-3704. Action by written consent

27 A. The members may approve any action THAT IS required or permitted
28 by chapters 24 through 40 of this title AND that requires the members'
29 approval without a meeting of members if the action is approved by members
30 holding at least a majority of the voting power, unless the articles of
31 incorporation, bylaws or chapters 24 through 40 of this title require a
32 different amount of voting power. The action shall be evidenced by one or
33 more written consents describing the action taken, signed by those members
34 representing at least the requisite amount of the voting power, and delivered
35 to the corporation for inclusion in the minutes or filing with the corporate
36 records.

37 B. If not otherwise fixed under section 10-3703 or 10-3707, the record
38 date for determining members entitled to take action without a meeting is the
39 date the first member signs the consent under subsection A of this section.

40 C. ~~A~~ THE consent signed under this section has the effect of a
41 meeting vote and may be described as such in any document.

42 D. Written notice of member approval pursuant to this section shall
43 be given to all members who have not signed the written consent.

1 E. Unless otherwise specified in the consent or consents, the action
2 is effective on the date that the consent or consents are signed by the last
3 member whose signature results in the requisite amount of the voting power,
4 except that if chapters 24 through 40 of this title require notice of
5 proposed actions to members who are not entitled to vote in the action and
6 the action is to be taken by unanimous consent of the members entitled to
7 vote, the effective date is not before ten days after the corporation gives
8 its members not entitled to vote written notice of the proposed action. The
9 notice shall contain or be accompanied by the same material that under
10 chapters 24 through 40 of this title would have been sent to members not
11 entitled to vote in a notice of meeting at which the proposed action would
12 have been submitted to the members for action.

13 F. Any member may revoke the member's consent by delivering a signed
14 revocation of the consent to the president or secretary before the date that
15 the consent or consents are signed by the last member whose signature results
16 in the requisite amount of the voting power.

17 G. FOR THE PURPOSES OF THIS SECTION, "SIGNATURE" INCLUDES AN
18 ELECTRONIC SIGNATURE AS DEFINED IN SECTION 44-7002.

19 Sec. 4. Section 10-3821, Arizona Revised Statutes, is amended to read:

20 10-3821. Action without meeting

21 A. Unless the articles of incorporation or bylaws provide otherwise,
22 action required or permitted by chapters 24 through 40 of this title to be
23 taken at a directors' meeting may be taken without a meeting if the action
24 is taken by all of the directors. The action must be evidenced by one or
25 more written consents describing the action taken, signed by each director
26 and included in the minutes filed with the corporate records reflecting the
27 action taken.

28 B. Action taken under this section is effective when the last director
29 signs the consent, unless the consent specifies a different effective date.

30 C. ~~A~~ THE consent signed under this section has the effect of a
31 meeting vote and may be described as such in any document.

32 D. Any director may revoke a consent by delivering a signed revocation
33 of the consent to the president or secretary before the date the last
34 director signs the consent.

35 E. FOR THE PURPOSES OF THIS SECTION, A CONSENT MAY BE SIGNED USING AN
36 ELECTRONIC SIGNATURE AS DEFINED IN SECTION 44-7002.

37 Sec. 5. Section 10-3823, Arizona Revised Statutes, is amended to read:

38 10-3823. Waiver of notice

39 A. A director may waive any notice required by chapters 24 through 40
40 of this title, the articles of incorporation or bylaws before or after the
41 date and time stated in the notice. Except as provided in subsection B OF
42 THIS SECTION, the waiver shall be in writing, ~~AND~~ signed by the director
43 entitled to the notice, OR BY ELECTRONIC MAIL and filed with the minutes or
44 corporate records.

1 B. A director's attendance at or participation in a meeting waives any
2 required notice to the director of the meeting unless the director at the
3 beginning of the meeting or promptly on the director's arrival at the meeting
4 objects to holding the meeting or transacting business at the meeting and
5 does not thereafter vote for or assent to action taken at the meeting.

6 C. FOR THE PURPOSES OF THIS SECTION, A WAIVER MAY BE SIGNED USING AN
7 ELECTRONIC SIGNATURE AS DEFINED IN SECTION 44-7002.

~~APPROVED BY THE GOVERNOR APRIL 7, 2003.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2003.~~

Passed the House March 19, 20 03,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Spencer L. Tyore
Chief Clerk of the House

Passed the Senate February 26, 20 03,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Chauncey Billington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1193

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 2, 2003

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Blumenthal
President of the Senate

Charmine Bullington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2003

at 12:30 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 7 day of

April, 2003,

at 2³⁰ o'clock P M.

Jan Nagel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2003

at 4:27 o'clock P M.

Janice K. Brewer
Secretary of State

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